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ILLEKTRON LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ILLEKTRON LLC,

Plaintiff,

v.

**ELECTRONIC ARTS INC.,
and DOES 1 through 10,**

Defendants.

Case No. 3:19-cv-3648

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION AND DILUTION**

(INJUNCTIVE RELIEF SOUGHT)

DEMAND FOR JURY TRIAL

Plaintiff, ILLEKTRON LLC, by and through its undersigned attorney, hereby
complains as follows:

JURISDICTION

1. This action arises under the Trademark Act of 1946 (the Lanham Act), as amended by the Federal Trademark Dilution Act of 1995. This Court has original jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

VENUE

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred in this District and because the Defendants are found and conduct business within this District.

INTRADISTRICT ASSIGNMENT

3. This is an Intellectual Property Action to be assigned on a district-wide basis pursuant to Civil L.R. 3-2(c).

PARTIES

4. Plaintiff ILLEKTRON LLC (“ILLEKTRON”) is a limited liability company organized under the laws of the California, with its principal place of business at 1037 Tamarisk Road, Palm Springs, California 92262.

5. Defendant ELECTRONIC ARTS INC. (“EA”) is, on information and belief, a corporation organized under the laws of the State of Delaware, with a principal place of business located at 209 Redwood Shores Parkway, Redwood City, California 94065, within the County of San Mateo, California.

6. On information and belief, DOES 1 through 10, inclusive, are persons and entities of unknown form that have commissioned, created, marketed and/or distributed the infringing products of Defendant EA complained of herein, and are legally responsible for damages to Plaintiff as herein alleged. Plaintiff will amend this complaint when the true names and capacities of said defendants have been ascertained.

PLAINTIFF’S MARK

7. Plaintiff ILLEKTRON is the developer of a suite of collectible card games, online games, and mobile games for the iOS (iPhone/iPad) and Android platforms, all identified by the distinctive mark “BATTLEZ”.

8. Plaintiff ILLEKTRON and its affiliated distributor Grand Prize Network have promoted the BATTLEZ® brand through the website <battlez.com> and the Instagram handle #BATTLEZ, reinforcing the fame of its game products through social media interaction among its customer/user base.

9. Plaintiff Illektron's BATTLEZ game brand has had significant exposure since 2003, beginning with the BATTLEZ collectible card game and expanding in 2008 for online services and interactive games. The popularity and fame of Plaintiff's BATTLEZ brand was established in the online gaming market over a decade ago, with the generation of online game

1 enthusiasts before the introduction of defendant EA's *Plants vs. Zombies* game franchise.

2 10. Plaintiff ILLEKTRON has devoted considerable time and expense in the
3 conception, development and promotion of the BATTLEZ® products, and owns all intellectual
4 property rights associated with them.

5 11. Plaintiff ILLEKTRON is the owner of United States trademark registration
6 number 2849581, issued on June 1, 2004, for card games and printed instructions sold
7 therewith, in class 28, used since December 6, 2003.

8 12. Plaintiff ILLEKTRON is the owner of United States trademark registration
9 number 3247482, issued on May 29, 2007, for card and dice games and printed instructions
10 sold therewith, in class 28, used since December 6, 2003.

11 13. Plaintiff ILLEKTRON is the owner of United States trademark registration
12 number 3829732, issued on August 3, 2010, for entertainment services, namely, providing a
13 web site featuring news, photographs and other multimedia materials in the field of interactive
14 games, and providing newsletters in the field of interactive games via e-mail, in class 41, used
15 since 2008.

16 14. Plaintiff ILLEKTRON is the owner of United States trademark registration
17 number 5032983, issued on August 30, 2016, for computer game software and electronic game
18 software, in class 9, used since February 25, 2016.

19 15. Plaintiff's registration numbers 2849581, 3247482 and 3829732 for the
20 BATTLEZ mark have become incontestable under 15 U.S.C. §1065. These registrations are,
21 therefore, conclusive evidence of Plaintiff's exclusive right to use the BATTLEZ mark.

22 **DEFENDANT'S INFRINGEMENTS**

23 16. Defendant EA has been using the BATTLEZ mark to identify a feature of game
24 play in its popular *Plants vs. Zombies* games and related materials. Instances of such usage in
25 promotional materials are: "compete against others in Battlez," "enter the Battlez arena,"
26 "Battlez Seasons, a new feature," and "more pulse-pounding Pinata Parties, Battlez
27 Tournaments, and Epic Quests."

28 17. On May 31, 2019, Plaintiff gave written notice to Defendant EA of its

1 infringement claims. Defendant EA responded but has refused to cease its infringing usage of
2 Plaintiff's mark.

3 18. Defendants EA and DOES 1 through 10, and each of them, have obtained
4 substantial profits from their infringements and unfair competition as herein alleged.

5 19. The actions of Defendants, and each of them, have caused and will cause
6 Plaintiff irreparable harm for which money damages and other remedies are inadequate.
7 Unless Defendants, and each of them, are restrained by this Court, they will continue and/or
8 expand the illegal activities alleged in this Complaint and otherwise continue to cause great
9 and irreparable damage and injury to Plaintiff. Accordingly, in addition to other relief sought,
10 Plaintiff is entitled to preliminary and permanent injunctive relief against Defendants EA and
11 DOES 1 through 10, and all persons acting in concert with them.

12 **FIRST CLAIM**

13 **Trademark Infringement**

14 20. Plaintiff realleges and incorporates by reference each of the allegations
15 contained in paragraphs 1 through 19 of this Complaint.

16 21. Without consent of Plaintiff, Defendants EA and DOES 1 through 10, and each
17 of them, have used the BATTLEZ mark in connection with the promotion and distribution of
18 EA's *Plants vs. Zombies* product as a mark to identify a feature of game play.

19 22. This usage by EA of the BATTLEZ mark is likely to cause confusion, mistake
20 or deception, in violation of 15 U.S.C. § 1114.

21 23. As a direct and proximate result of the infringing activities of Defendants EA
22 and DOES 1 through 10, and each of them, Plaintiff has suffered substantial damage.

23 **SECOND CLAIM**

24 **Unfair Competition**

25 24. Plaintiff realleges and incorporates by reference each of the allegations
26 contained in paragraphs 1 through 19 of this Complaint.

27 25. Defendants' conduct constitutes the use of words, symbols or devices tending
28 falsely to describe the infringing items, within the meaning of 15 U.S.C. § 1125(a)(1).

Defendants' conduct is likely to cause confusion, mistake, or deception by or in the public as to the affiliation, connection, association, origin, sponsorship or approval of the infringing items to the detriment of Plaintiff and in violation of 15 U.S.C. § 1125(a)(1).

26. As a direct and proximate result of the infringing activities of Defendants EA and DOES 1 through 10, and each of them, Plaintiff has suffered substantial damage.

THIRD CLAIM

Dilution of Famous Mark

27. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 19 of this Complaint.

28. At the time of Defendant EA's usage of "Battlez" in its *Plants vs. Zombies* product, and within the relevant market, Plaintiff's BATTLEZ mark was distinctive and famous within the meaning of the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c), as amended.

29. Defendant EA's usage of "Battlez" as herein alleged has diluted or is likely to dilute the distinctive quality of Plaintiff's BATTLEZ mark by blurring in violation of 15 U.S.C. § 1125(c), as amended.

30. Plaintiff is entitled to injunctive relief pursuant to 15 U.S.C. § 1125(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant it the following relief:

a.) Adjudge that Plaintiff's BATTLEZ mark has been infringed by Defendants in violation of the rights of Plaintiff under 15 U.S.C. § 1114;

b.) Adjudge that Defendants have competed unfairly with Plaintiff in violation of its rights under 15 U.S.C. § 1125(a);

c.) Adjudge that Defendants' activities are likely to, or have, diluted Plaintiff's famous BATTLEZ mark in violation of the rights of Plaintiff under 15 U.S.C. § 1125(c);

d.) Adjudge that Defendants, their subsidiaries, parent and affiliated companies, successors, assigns, agents, and employees, and all others acting for, with, by, through or in concert with Defendants, shall be enjoined and restrained permanently from using Plaintiff's

1 BATTLEZ mark, and any other mark, word, name or symbol that is likely to cause confusion
2 with, or cause dilution of, Plaintiff's mark;

3 e.) Adjudge that Defendants, within thirty (30) days after service of the judgment
4 demanded herein, be required to file with this Court and serve upon counsel for Plaintiff a
5 written report under oath setting forth in detail the manner in which they have complied with
6 the judgment;

7 f.) Adjudge that Plaintiff recover from Defendants its damages in an amount to be
8 proven at trial;

9 g.) Adjudge that Plaintiff be awarded the costs of this action, together with
10 reasonable attorney's fees and disbursements; and

11 h.) Adjudge that all such other and further relief be awarded to Plaintiff as the Court
12 deems just and equitable.

13 Dated: June 24, 2019

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15 FRITZ CLAPP
16 Attorney for Plaintiff ILLEKTRON LLC

17 **JURY DEMAND**

18 Plaintiff hereby demands trial by jury of all issues triable herein, pursuant to Fed. R.
19 Civ. P. 38(b).

20 Dated: June 24, 2019

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22 FRITZ CLAPP
23 Attorney for Plaintiff ILLEKTRON LLC
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